

ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - SOYBEAN OR CANOLA CRUSHING FACILITY CONSTRUCTION OR RETROFIT CREDIT

Pursuant to North Dakota Century Code Section 54-35-26, created by 2015 Senate Bill No. 2057, a variety of economic development tax incentives are to be reviewed by a Legislative Management interim committee over the ensuing six-year period. The study is aimed at ensuring that economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum has been provided to assist in the review of the soybean or canola crushing facility construction or retrofit credit and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating or altering the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

EXPLANATION OF THE SOYBEAN OR CANOLA CRUSHING FACILITY CONSTRUCTION OR RETROFIT CREDIT

Section 57-38-30.6 provides for a soybean or canola crushing facility construction or retrofit credit. The incentive is available to corporate income taxpayers and allows for a credit against state income tax liability in the amount of 10 percent per year for five years of the taxpayer's direct costs incurred after December 31, 2008, to adapt or add equipment to retrofit an existing facility or to construct a new facility in this state for the purpose of producing crushed soybeans or canola. Credit amounts exceeding a taxpayer's liability may be carried forward to each of the five succeeding taxable years, but a taxpayer is limited to claiming no more than \$250,000 in credits over any combination of taxable years. Eligible costs incurred by a taxpayer before a facility begins crushing soybeans or canola may not be claimed for purposes of the credit until taxable years on or after crushing begins.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING OR ALTERING THE SOYBEAN OR CANOLA CRUSHING FACILITY CONSTRUCTION OR RETROFIT CREDIT

Section 57-38-30.6 was created through the passage of 2003 House Bill No. 1309. As originally enacted, Section 57-38-30.6 only provided for a corporate income tax credit for costs incurred to adapt or add equipment to retrofit an existing facility or construct a new facility in this state for the purpose of producing or blending diesel fuel containing at least 2 percent biodiesel fuel by volume. It was not until the passage of 2009 House Bill No. 1489 that the credit was expanded to apply to the costs incurred to adapt or add equipment to retrofit an existing facility or construct a new facility in this state for the purpose of producing crushed soybeans or canola. Upon a review of the legislative history pertaining to 2009 House Bill No. 1489, the perceived goal of the Legislative Assembly in creating this credit was to encourage the modification of existing facilities or the construction of new facilities capable of crushing soybeans or canola in order to process those commodities in North Dakota rather than shipping them out of state for processing. It was noted that a large amount of soybeans were being shipped to neighboring states such as Minnesota and South Dakota for crushing and processing. The credit was viewed as a tool to help build a stronger rural economy in North Dakota. The estimated fiscal effect of the soybean or canola crushing facility construction or retrofit credit could not be determined during the 2009 legislative session.

The only other change impacting Section 57-38-30.6 occurred through the passage of 2011 Senate Bill No. 2034, which served to further expand the credit to apply to costs incurred to adapt or add equipment to retrofit an existing facility or construct a new facility in this state for the purpose of producing or blending diesel fuel containing at least 2 percent green diesel fuel by volume. The most recent fiscal data pertaining to the credit, provided to the Political Subdivision Taxation Committee by the Tax Department on July 29, 2015, and later amended on August 12, 2015, indicates the soybean or canola crushing facility construction or retrofit credit was not claimed on any corporate income tax returns in tax years 2009 through 2014.

DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE SOYBEAN OR CANOLA CRUSHING FACILITY CONSTRUCTION OR RETROFIT CREDIT

Data pertaining to the following items will need to be collected to effectively analyze the incentive:

1. The number of claimants;
2. The fiscal impact of the incentive;
3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive;

4. Negative impacts created as a result of the incentive;
5. Benefits that flow to out-of-state concerns resulting from the incentive; and
6. The use of this type of incentive in other states.

Testimony will need to be solicited from the following parties to effectively analyze the incentive:

1. The Department of Commerce;
2. The Tax Department; and
3. The North Dakota Economic Development Foundation.